IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 611 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALUMIYA JUMMAMIYA CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MS SADHANA SAGAR for Appellant
MR AJ DESAI, Ld. APP for Respondent.

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

1. On 9th April, 2001, when this appeal came up for admission, we have asked learned advocate Ms.Sadhana Sagar for the appellant and learned APP Mr.A. J. Desai for the respondent - State, to be ready to argue out the case, as if the matter is to be heard finally, and we adjourned the matter on 16th April, 2001 i.e. today. Considering the facts and circumstances of the case, we have decided to dispose of the matter finally. Hence, admit and Mr.A. J. Desai, Learned APP waives the service. With the consent of Learned Advocates the appeal is finally heard.

2. The appelalnt/accused - Kaluminya Jummaminya Chauhan was charged for the offence punishable under Section 302 of the Indian Penal Code and under Section 3(2) and 5 of the Atrocity Act. The learned Special Judge and Sessions Judge, Bharuch by his judgment and order dated 9th June, 2000 convicted the appellant for the offence punishable under Section 304 Part-I of Indian Penal Code and acquitted the appellant for the rest of the offences. The learned Judge, however, has imposed the sentence of rigorous imprisonment for 20 years and to pay fine of Rs.150/(Rs.One Hundred Fifty Only) for the offences punishable under Section 304, Part-I of Indian Penal Code. It is against the said judgment and order of sentence, the appellant has preferred the present appeal.

3. The incident in question happened on 20th November, 1998. The complainant is the daughter of deceased Shankarbhai. It is stated by the complainant that she had married to the appellant about 14 years back. After the wedlock with the appellant, she had three children. As the appellant was not doing any other work, he was residing with the parents of the complainant. As stated above, as the complainant was not doing any other work, naturally he was not contributing anything to the family of the complainant and, therefore, the deceased father of the complainant was insisting that his daughter may be released by divorce. On the day of incident, at about 2.00 p.m. when the complainant and her mother were at home the accused came and the father of the complainant asked him about divorce to his daughter and, therefore, the appellant lost temper and had refused to give divorce. Thereafter, there were exchange of heated words. It is the case of the

complainant that the appellant took her father out of the house and after laying down him forcibly, the appellant sat on the chest of the deceased and by both the hands throttled the deceased forcibly, with the result deceased lost his life.

4. The complainant Meliben Kalumiya is examined herself at Ex.6. She has given the complete version in her evidence as per her complaint. She is supported by her mother and neighbour Kailashben who are examined at Ex.2 and Ex.3. It was suggested in the cross-examination that the deceased was an aged person and was not keeping good health and, therefore, had committed suicide as he was tired of his life. The said suggestion is denied. P.W.10 - the Medical Officer of Jagadia Hospital who performed the postmortem has stated in no uncertain terms that the cause of the death of the deceased is asphyxia. Thus, the medical evidence clearly supports the say of the eye witnesses. There is no reason for us to ignore the evidence of the eye witnesses. An attempt was made on behalf of the appellant by the learned advocate by contending that looking to the conduct of the eye witnesses of not intervening to save the deceased, will go to suggest that they were not present and, therefore, no reliance can be placed on such evidence. It was further contended that P.W.1 and P.W.2 being daughter and wife of the deceased and, therefore, they are interested witnesses and, therefore, also their evidence is required to be ignored. It is not possible for us to accept the said submission. It is very difficult to answer the question as to why P.W.1 and 2 did not intervene when the appellant committed an act of throttling. The fact that merely, no attempt is made by eye witnesses to save the deceased, that by itself cannot be a ground to reject the evidence of eye witnesses. Similarly, since the incident in question is taken place in the house of the deceased, it is but natural that there would be only family members who witnessed the incident. We, therefore, hold that the appellant is responsible for shortening the life of deceased. The learned trial Judge, however, after considering the over all circumstances of the case, came to the conclusion that the act of the appellant can be said to be one of culpable homicide and not amount to murder and according to the appellant, he is guilty for the offence punishable under Section 304, Part-I of the Indian Penal Code. We are totally in agreement with the reasoning of the learned trial Judge. This is in view of the fact that sudden quarrel having been taken place without any premeditation and the appellant was not ready to give divorce as it was a married life of 14 years with

three children, and therefore, both of them exchanges heated arguments and fight having been taken place between the appellant and deceased and, thereafter, the appellant took the deceased out of his house and throttled the neck of the deceased as a result of which, the deceased lost his life would in our opinion, will amount to the case of culpable homicide under Section 304, Part-I of the Indian Penal Code. Therefore, we uphold the order of conviction passed by the learned trial Judge and accordingly, convict the appellant for the offence punishable under Section 304, Part-I of the Indian Penal Code. As far as the sentence of rigorous imprisonment for 20 years awarded by the trial Judge to the appellant, it is quite disproportionate to the offence and therefore, it cannot be sustained. We, therefore, modify the sentence awarded by the learned trial Judge by awarding the sentence to the appellant to suffer rigorous imprisonment for seven years and to pay fine of Rs.1500/(Rupees One Thousand and Five Hundred Only), in default to undergo simple imprisonment for 15 days.

5. In the result, the appeal is partly allowed. The judgment and order passed by the learned Special Judge and Sessions Judge, Bharuch in Special Atrocity Case No.48 of 1999 convicting the appellant for the offence punishable under Section 304, Part-I and acquitting him for the offences under Sections 3(2) and 5 of Atrocity Act is confirmed. However, we set aside the sentence to suffer rigorous imprisonment for 20 years and instead that of we award rigorous imprisonment for seven years and to pay a fine of Rs.1500/- (Rupees One Thousand and Five Hundred Only), in default, to undergo further simple imprisonment for 15 days.

(K. R. Vyas, J.)

(R. P. Dholakia, J.)

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